



Signed and Filed: August 8, 2022

A handwritten signature in black ink, appearing to read "Hannah L. Blumenstiel", is written over a horizontal line.

HANNAH L. BLUMENSTIEL  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

|                          |                              |
|--------------------------|------------------------------|
| In re:                   | ) Case No. 19-31024 HLB      |
|                          | )                            |
| RICHARD TOM,             | ) Chapter 7                  |
|                          | )                            |
| Debtor.                  | )                            |
|                          | )                            |
| MARK NG, KENDALL NG, and | )                            |
| LORAIN WONG,             | ) Adv. Proc. No. 19-3065 HLB |
|                          | )                            |
| Plaintiffs,              | )                            |
| v.                       | )                            |
|                          | )                            |
| RICHARD TOM,             | )                            |
|                          | )                            |
| Defendant.               | )                            |
|                          | )                            |

**ORDER TO SHOW CAUSE RE: CONTEMPT AND SANCTIONS**

On June 6, 2022, the court issued its Sixth Order Regarding Discovery Dispute.<sup>1</sup> The Sixth Order required third party Kenesha Fudge to appear in her capacity as Trustee of the Moon Irrevocable Trust and testify at a continued deposition, which was to take place on or prior to June 30, 2022. The Sixth Order also required Ms. Fudge to produce no later than June 17, 2022

(a) any and all communications in per possession or control between herself and Richard Tom, Louis Hop Lee, Justin Tom,

<sup>1</sup> Dkt. 103 (the "Sixth Order").

1 Garrett Tom, Ryland Tom, and Winnie Jiang; **and (b)** any and all  
2 documents in her possession or control that are responsive to a  
3 subpoena served by counsel for Plaintiffs Mark Ng, Kendall Ng,  
4 and Loraine Wong.

5 On July 7, 2022, the court received a letter from  
6 Plaintiffs' counsel detailing their efforts to obtain Ms. Fudge's  
7 compliance with the Sixth Order. Plaintiffs complain that Ms.  
8 Fudge has not appeared for her court-ordered continued deposition  
9 and has not produced the documents identified in the Sixth Order.  
10 Plaintiffs demanded that the court issue an order requiring Ms.  
11 Fudge to appear and show cause as to why she should not be held  
12 in contempt and sanctioned for her willful failure to comply with  
13 the Sixth Order.

14 After receiving Plaintiffs' counsel's July 7 Letter, the  
15 court invited Ms. Fudge to respond, which she did on July 11,  
16 2022. As relevant to this discovery dispute, Ms. Fudge insists  
17 that she suffers from health problems that make it difficult for  
18 her to concentrate and testify. She does not deny that she  
19 failed to comply with the Sixth Order.

20 Where a party "fails to obey an order to provide or permit  
21 discovery," the court may impose sanctions under Civil Rule 37<sup>2</sup>  
22 and Bankruptcy Rule 7037. Such sanctions may include "Striking  
23 the pleadings in whole or in part" or directing that the matters  
24  
25  
26

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27 <sup>2</sup> Unless otherwise indicated, all citations to a "Civil Rule" shall refer to  
28 one of the Federal Rules of Civil Procedure and all citations to a "Bankruptcy  
Rule" shall refer to one of the Federal Rules of Bankruptcy Procedure.

embraced in the order are taken as established for purposes of the action, as the prevailing party claims.<sup>3</sup>

It is also well-established that a bankruptcy court has and may exercise civil contempt authority.<sup>4</sup> In order to hold a litigant in civil contempt, the court must find that they violated a specific and definite order of the court and that the litigant had notice of the terms of the order and of the fact that they would be sanctioned for noncompliance.<sup>5</sup> Sanctions for civil contempt must be either compensatory or coercive.<sup>6</sup>

Ms. Fudge has refused to comply with the Sixth Order, with which she was served. The Sixth Order warned that any failure to comply might result in the imposition of sanctions. Although Ms. Fudge suffers from health problems, vague, unspecific allegations of such issues are not sufficient to justify her failure to appear for a court-ordered continued deposition. Accordingly, the court believes that a finding of contempt and the imposition of discovery and/or contempt sanctions might be appropriate.

Accordingly, the court **ORDERS** as follows:

**1.** On **September 15, 2022 at 2:00 p.m.**, the court will convene a hearing to consider whether it should hold Ms. Kenesha Fudge in contempt and if so, whether it should impose contempt

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<sup>3</sup> Civil Rule 37(b)(2)(A)(i) and (iii), as made applicable by Bankruptcy Rule 7037.

<sup>4</sup> Oliner v. Kontrabecki, 305 B.R. 510, 520 (9th Cir. 2004); Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1190-91 (9th Cir. 2003).

<sup>5</sup> In re Hercules Enterprises, Inc., 387 F.3d 1024, 1027-28 (9th Cir. 2004) (citing In re Rainbow Magazine, 77 F.3d 278, 283 (9th Cir. 1996) and Dyer, 322 F.3d at 1190-91).

<sup>6</sup> In re Nguyen, 447 B.R. 268, 282 (B.A.P. 9th Cir. 2011).

1 sanctions. The court also will consider whether discovery  
2 sanctions are appropriate, with or without a finding of contempt.  
3 Contempt or discovery sanctions could include, but are not  
4 limited to, an award of attorneys' fees and costs to Plaintiffs  
5 to compensate them for the expenses associated with their  
6 attempts to obtain compliance with the Sixth Order, or other  
7 monetary sanctions intended to coerce Ms. Fudge's compliance with  
8 the Sixth Order.

9       **2.** The September 15, 2022 hearing will convene via Zoom.  
10 The court encourages all interested parties to consult the  
11 court's website for information concerning the status of court  
12 operations during the COVID-19 pandemic. The court's website  
13 also offers information explaining how to arrange an appearance  
14 at a video hearing. If you have questions about court operations  
15 or how to participate in a video hearing, you may contact the  
16 court by calling 888-821-7606 or by using the Live Chat feature  
17 on the court's website.

18       **3.** If Ms. Fudge wishes to avoid being held in contempt and  
19 the imposition of contempt and/or discovery sanctions, she shall:

20       **a.** Appear for and complete the continued deposition  
21 ordered by the Sixth Order on or prior to **September 2, 2022;**

22       **b.** No later than **August 26, 2022**, produce to Plaintiffs'  
23 counsel all of the documents described in the Sixth Order;

24       **c.** File a written response to this order no later than  
25 **September 6, 2022.** Ms. Fudge's response shall be executed under  
26 penalty of perjury, and shall not exceed 5 pages absent prior  
27 leave of court. This page limit does not apply to any exhibits  
28

1 that Ms. Fudge might authenticate and introduce in her response;  
2 **and**

3 **d.** Appear at the September 15 hearing set pursuant to this  
4 order.

5 **4.** No later than **September 6, 2022**, Plaintiffs' counsel  
6 shall file and serve a declaration attesting to Ms. Fudge's  
7 compliance with Paragraph 3 of this order. Plaintiffs' counsel's  
8 declaration shall not exceed 5 pages, absent prior leave of  
9 court. This page limit does not apply to any exhibits introduced  
10 and authenticated by such declaration.

11 **5.** Any failure to timely or fully comply with this order  
12 will result in a finding of contempt and in the imposition of  
13 sanctions against the noncompliant party.

14  
15 **\*\*END OF ORDER\*\***  
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**Court Service List**

Kenesha Fudge  
103 Benji Court  
Meridianville, AL 35759